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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,858	09/11/2003	Michael Wildie McCarty	06005/37297	4987
4743	7590	12/22/2005	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP 233 S. WACKER DRIVE, SUITE 6300 SEARS TOWER CHICAGO, IL 60606			KRISHNAMURTHY, RAMESH	
		ART UNIT	PAPER NUMBER	
		3753		

DATE MAILED: 12/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	10/659,858	Applicant(s) MCCARTY, MICHAEL WILDIE
Examiner	Art Unit 3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 12 October 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1, 6, 7, 8, 12, 14 - 24 & 29 - 36 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 8, 24 & 29 - 35 is/are allowed.  
 6) Claim(s) 1, 12, 14, 15, 22, 23 and 36 is/are rejected.  
 7) Claim(s) 6, 7 & 16 - 21 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 12 October 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

This office action is responsive to amendment filed 10/12/2005.

**Claims 1, 6- 8, 12, 14 – 24 and 29 - 36 are pending.**

1. The replacement drawings incorporating corrections were received on 10/12/05.

These drawing corrections are approved. However the drawings remain objected to because of the objections raised in PTO-948 attached to the previous office action mailed on 06/10/05.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 12, 14, 15, 22, 23 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Foster (US 3,026,800).

Foster discloses a fluid pressure releasing vent diffuser, comprising: an output conduit (1) adapted to be connected to a source of pressurized fluid; a retainer guide (2) connected to the output conduit, the guide retainer having a closed end (near (24)); a diffuser element (12) positioned within the retainer guide; a plug (9) slidably disposed within the retainer guide and adapted to move relative to the diffuser element; and a spring (13) positioned between the plug and the closed end of the retainer guide, the spring biasing the plug toward a closed diffuser position, and fluid pressure biasing the plug toward an open diffuser position; further including a supplemental source of pressurized fluid in communication with the retainer guide and acting on the plug, via a control valve (15) wherein the supplemental source of pressurized fluid is the same

source of pressurized fluid connected to the output conduit. A threaded arrangement (5) is disclosed that allows the bias on the spring (13) to be varied.

It is noted that under normal operating conditions, the fluid pressure prevailing in the output conduit (25) is the same as the fluid pressure in the space (20) and thus the corresponding end of the plug (9) is exposed to the fluid pressure prevailing within the output conduit.

4. Claims 8, 24 and 29- 35 are allowed.
5. Claims 6, 7 and 16 – 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

6. Applicant's arguments filed 10/12/05 have been fully considered but they are not persuasive. Regarding applicant's argument that there is no supplemental third force in Foster reference, it is the examiner's position that there is a third force that is derived from a supplemental fluid source i.e. the pressurized fluid in the container flowing via the control valve (15). The first force is derived from the pressure of the fluid present in the conduit (19, 20) that fluid being derived from the pressurized fluid, too. Regarding applicant's argument that the Foster reference fails to teach a preload assembly adapted to impart a compressive force on the spring thereby adjusting the preload on the spring, as recited in the newly presented claim 36, it is noted that Foster does disclose means (5) that is threadedly arranged on the housing and imparts compressive force on the spring (8) thereby adjusting the preload on the spring. While Foster does

disclose the adjustment of the spring-preload on the control valve (15) that is not germane to the rejection set forth above.

**7. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

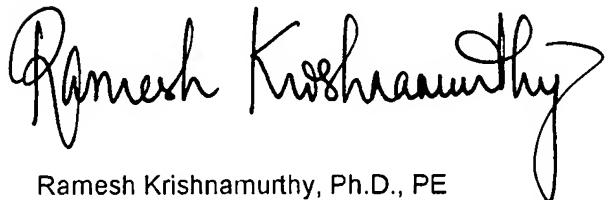
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramesh Krishnamurthy whose telephone number is (571) 272 – 4914. The examiner can normally be reached on Monday - Friday from 10:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen L. Blau, can be reached on (571) 272 – 4406. The fax phone number for the organization where this application or proceeding is assigned is (571) 273 – 8300.

Art Unit: 3753

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

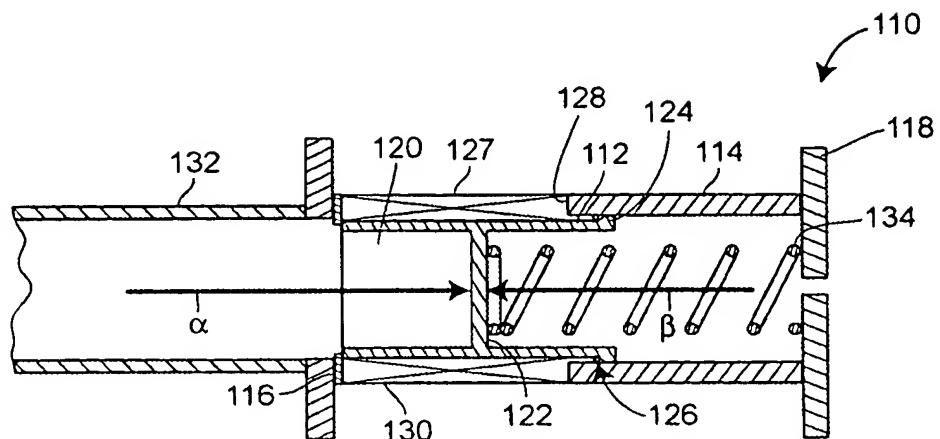


Ramesh Krishnamurthy, Ph.D., PE  
Primary Examiner  
Art Unit 3753

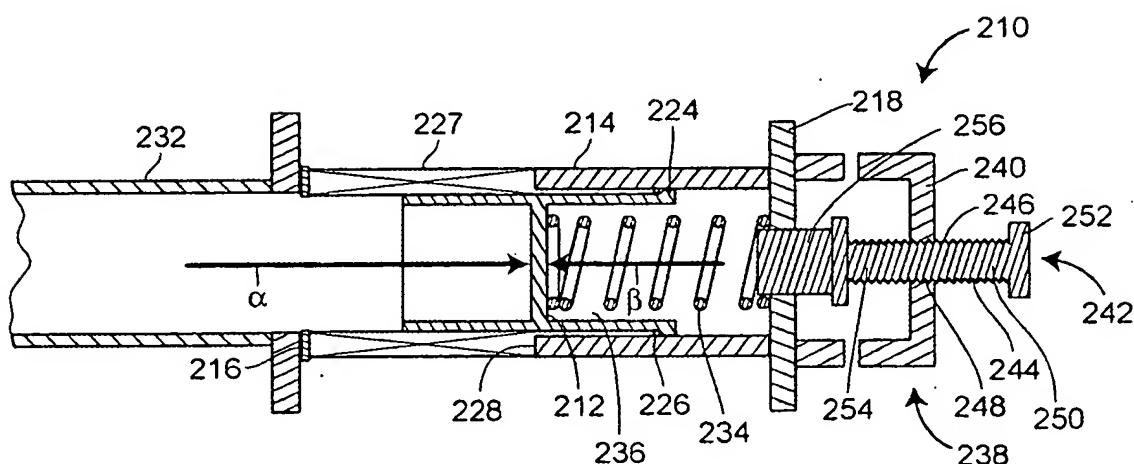


## REPLACEMENT SHEET

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**FIG. 5**



**FIG. 6**

Approved.  
RK  
12/20/03